

Delhi High Court

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Bharat Bhushan Srivastava vs Principal Director, The ... on 5 August, 2013

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: 05.08.2013 + W.P.(C) 4722/2013

BHARAT BHUSHAN SRIVASTAVA Petitioner Through:Petitioner in person.

versus

PRINCIPAL DIRECTOR, THE COMPTROLLER & AUDITOR

GENERAL OF INDIA Respondent Through:

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner before this Court applied to the CPIO in the Office of the Comptroller and Auditor General of India, seeking certain information with respect to the Departmental Promotion Committee meetings which took place in the years 1976, 1979 and 1980. Vide communication dated 30 th September, 2009, the petitioner was informed that the information sought by him was not available and therefore, it is not possible to furnish the said record to him. Being aggrieved, the petitioner preferred an appeal before the Appellate Authority. Vide communication dated 18th November, 2009, the Appellate Authority informed the petitioner that since after making all out efforts by all concerned sections, the concerned records W.P.(C) 4722/2013 Page 1 of 4 and the documents were not traceable at that belated stage, his appeal was dismissed. Being still aggrieved, the petitioner approached the Central Information Commission. Vide order dated 9th June, 2010, the Central Information Commission, inter alia, held as under:-

"3. Appellant claims that respondents could not take the plea of untraceability of the record no matter howsoever old because the Retention Schedule of the type of record mentioned in his RTI-application was over 35 years.

4. Respondents urged that they had made a diligent search to trace-out the record, which belong to the year 1976, and were unable to trace it.

5. I have no reason to disbelieve the agreement of the respondents. The record appears to be unavailable or untraceable. It is not possible to authorize any disclosure in respect of records confirmed to be untraceable."

2. The contention of the petitioner is that under the Manual of Office Procedure in the Office of Comptroller and Auditor General of India (Seventh Edition) 2003, the record, such as, the Minutes of DPC Meeting and petitions, appeals, memorials on supersession by juniors are to be preserved for a period of 35 years.

3. It is not known what was the period for which the aforesaid record was required to be preserved before the year 2003. Be that as it may, the W.P.(C) 4722/2013 Page 2 of 4 fact remains that the PIO as well as the Appellate Authority were satisfied that despite the efforts made by all the concerned sections, it had not been possible to trace the records which the petitioner had sought under RTI Act. The Central Information Commission noted that the respondent had made diligent search to trace out the record which pertains to the

year 1976 but was unable to trace it. The Commission, therefore, was satisfied that the aforesaid record is not traceable. In the absence of availability of the record, it was not possible to supply the information which the petitioner had sought under RTI Act. I see no reason to take a view different from the view taken by the Central Information Commission in this regard.

4. The petitioner submits that in case the record was not traceable, the Commission should have invoked its powers under Section 19(8)(b) of RTI Act, which powers the Commission to direct the Public Authority concerned to compensate the complainant for any loss or any other detriment suffered by him. In my view, there was no occasion for the Commission to invoke the aforesaid powers, in case it was satisfied that despite best efforts, the respondents were not able to trace the aforesaid record. This provision, to my mind, should be invoked only where the record, despite being available, is not provided to the applicant and as a result thereof he suffers some loss W.P.(C) 4722/2013 Page 3 of 4 for which he needs to be compensated. A bona fide inability to trace the old records cannot warrant levy of compensation.

The writ petition is devoid of any merits and is accordingly dismissed. V.K. JAIN, J

AUGUST 05, 2013

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